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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 JOHN LATCH, an unmarried adult,

11 Plaintiff,

12 v.

13 GRAYS HARBOR COUNTY, a Washington  
14 State municipal corporation; and SIERRA  
PACIFIC INDUSTRIES, a foreign  
15 corporation; JUNCTION CITY  
DEVELOPMENT COMPANY, LLC, a limited  
16 liability company,

17 Defendants.

Case No. C07-5633 FDB

ORDER TO SHOW CAUSE RE:  
REMAND FOR LACK OF FEDERAL  
JURISDICTION

18 Plaintiff's Complaint was filed in Thurston County Superior Court on October 17, 2007. On  
19 November 15, 2007, Defendant Grays Harbor County removed the action to this Court on the basis  
20 that Plaintiff's complaint alleged that Defendants have violated rights secured by the Constitution  
21 and/or laws of the United States. Specifically, Plaintiff's Second Amended Complaint states claims  
22 against Defendants for an alleged wrongful deprivation of home and property, and rights , privileges  
23 or immunities secured by and under the U.S. Constitution, for which Plaintiff seeks damages, costs  
24 and attorney's fees pursuant to 42 U.S.C. § 1983.

25 On November 25, 2008 the sole governmental entity defendant, Grays Harbor County, was

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1 dismissed from this action.

2 Plaintiff's basis for a federal claim is 42 U.S.C. § 1983. A section 1983 claim requires, (1)  
3 that a person acting under color of state law committed the conduct at issue, and (2) that the conduct  
4 deprived the claimant of some right, privilege, or immunity protected by the Constitution or laws of  
5 the United States. Leer v. Murphy, 844 F.2d 628, 632-33 (9<sup>th</sup> Cir. 1988). There is a presumption  
6 that private conduct is not government action; something more than acting pursuant to generally  
7 applicable state law is required for a private entity to be considered acting under color of law.  
8 Sutton v. Providence St. Joseph Med. Ctr., 192 F.3d 826, 836 (9<sup>th</sup> Cir. 1999). A claim of private  
9 party misuse of a state statute does not describe conduct that can be attributable to the state. Lugar  
10 v. Edmondson Oil Co., Inc. 457 U.S. 922, 941 (1982). Nor does the mere fact that the government  
11 compelled a result suggest that the government's action is 'fairly attributable' to the private  
12 defendant. Sutton, at 838.

13 A federal court has jurisdiction over "only those cases in which a well-pleaded complaint  
14 establishes either that federal law creates the cause of action or that the plaintiff's right to relief  
15 necessarily depends on resolution of a substantial question of federal law." Franchise Tax Board v.  
16 Construction Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983). Here, the plea of a federal  
17 constitutional claim is termed in generalities and appears to lack the element of "state action", thus  
18 denying the Court of jurisdiction. This would require remand to the state court. The parties are  
19 accordingly directed to show cause, no later than December 10, 2008, the basis for federal  
20 jurisdiction and why the matter should not be remanded to Thurston County Superior Court.

21 IT IS SO ORDERED

22 DATED this 1<sup>st</sup> day of December, 2008.

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25 FRANKLIN D. BURGESS  
26 UNITED STATES DISTRICT JUDGE